

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

STRATHMORE HALL FOUNDATION, INC.

Petitioner

and

Case: 05-UC-162051

**TREASURERS AND TICKET SELLERS,
LOCAL 868, IATSE**

Union

DECISION AND ORDER CLARIFYING BARGAINING UNIT

Strathmore Hall Foundation, Inc. (the Employer) filed a petition on October 15, 2015,¹ with the National Labor Relations Board (the Board) under Section 9(b) of the National Labor Relations Act (the Act), seeking to clarify an existing bargaining unit (the Unit) of approximately 23 employees represented by Treasurers and Ticket Sellers, Local 868, IATSE (the Union).² The Unit includes “all full-time and regular part-time employees employed by the Employer in the Employer’s ticket office,” and excludes “all office clerical employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined by the Act.”³ The Employer seeks to clarify the Unit by excluding employees in three classifications as statutory supervisors under Section 2(11) of the Act, and/or as managerial employees. Those three classifications are: Ticket Office Manager; Assistant Ticket Office Manager; and Ticket Services Coordinator. For each classification, the Employer currently employs one individual. The classifications in question were occupied at the time of the hearing as follows:

¹ All dates herein occurred in 2015, unless otherwise noted.

² Earlier this year, the Union filed a representation petition, Case 05-RC-159569, and I approved a stipulated election agreement between the parties covering the Unit. As part of this agreement, the parties agreed that individuals employed in three classifications (Ticket Office Manager; Assistant Ticket Office Manager; and Ticket Services Coordinator) would be permitted to vote, but that their ballots would be challenged because each individual’s eligibility had not been resolved. A secret-ballot election was conducted on September 30, and the Acting Regional Director issued a Certification of Representative of the Union for the Unit on October 8. A week later, the Employer filed the petition in the present case, which is necessary to resolve whether each classification should be included in the Unit.

³ The same parties in this matter previously stipulated in Case 05-RC-159569, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Ticket Office Manager	-	Chadwick Sands
Assistant Ticket Office Manager	-	Christian Simmelink
Ticket Services Coordinator	-	Jeffrey Higgins

The Union contends that each of these individuals should be included in the Unit because the Employer failed to show that each possesses the requisite statutory criteria to be deemed a supervisor under Section 2(11), or has sufficient authority to qualify as a managerial employee. In contrast, the Employer claims that each individual has the authority to hire part-time ticket office staff, and that each effectively recommends the hire of higher-level staff because of the level of deference their recommendations receive. Furthermore, the Employer claims that each individual exercises discretion in directing employees on how to perform their jobs, and can act on behalf of the Employer by ordering supplies. Finally, the Employer stresses that each individual should be considered a Section 2(11) supervisor because the Employer's top executives intended to imbue each classification with authority to supervise and manage the operations of the ticket office, and that the ticket office staff views these three individuals as having supervisory authority.

A hearing officer of the Board conducted a hearing in this matter on November 10. The Employer and the Union appeared at the hearing, and the parties filed post-hearing briefs. I have carefully considered the evidence and the arguments presented by the parties on the issues. For the reasons discussed below, I find, in partial agreement with the Employer and partial agreement with the Union, that the Unit should be clarified to exclude the classifications of Ticket Office Manager, as I find that the Employer met its burden of establishing that the Ticket Office Manager is a supervisor under Section 2(11). Conversely, I find that the Unit should be clarified to include the classifications of Assistant Ticket Office Manager and Ticket Services Coordinator, as I find that the Employer did not meet its burden of establishing either's status as a statutory supervisory.

I. FACTS

The Employer operates a facility in North Bethesda, Maryland, where it is engaged in the business of presenting and producing visual, cultural and performing arts programs.⁴ The Employer programs concerts and performances at its facilities, and the Employer also rents its facilities to organizations. Within its facility, the Employer has a ticket office, where the Unit employees and the individuals at issue all work.

⁴ The same parties in this matter previously stipulated in Case 05-RC-159569, and I find, that the Employer is a Maryland corporation with an office and principal place of business in North Bethesda, Maryland, and it is engaged in the business of presenting and producing visual and performing arts programs. During the fiscal year ending June 30, 2015, the Employer, in conducting its operations described herein, purchased and received at its North Bethesda, Maryland facility, goods valued in excess of \$50,000 directly from points outside the State of Maryland.

a. Ticket Office Manager

The Ticket Office Manager is responsible for the day-to-day operations of the Employer's ticket office, including the service to patrons and organizations that rent the Employer's facility, as well as the sale, control, and recording of tickets for events at the Employer's facility.⁵ As part of having overall responsibility for the operation of the ticket office, the Ticket Office Manager is also responsible for the supervision and management of all sales and ticket office staff, including the Assistant Ticket Office Manager and Ticket Services Coordinator, the two other classifications at issue in this proceeding. According to Eliot Pfanstiehl, the Employer's Chief Executive Officer and founder, the Employer hired the current Ticket Office Manager over ten years ago, when the Employer was moving to its current facility and creating a new ticket office.⁶ The Ticket Office Manager completes evaluations for the ticket office employees. The requirements for the Ticket Office Manager position include "at least five years experience in Box/Ticket office operations, preferably at the managerial level with supervision of others."

The Ticket Office Manager has the authority to hire all part-time hourly employees. Neither the Employer's Executive Vice President nor its President participates in any interviews for part-time staff. However, the Executive Vice President supplies a third-party contractor with information on a candidate for a background check, without which a candidate cannot be hired. When a candidate's background check is cleared, the Executive Vice President informs the Ticket Office Manager, who hires the candidate. In addition, the Ticket Office Manager makes recommendations to the Employer's Chief Executive Officer on the hiring and promotion of full-time employees, such as the Ticket Services Coordinator. Similarly, the Executive Vice President does not participate in any interviews for such positions. Although the Chief Executive Officer makes the final decision on full-time positions, in most cases the Chief Executive Officer has not met the applicant. The Ticket Office Manager also recommends staff to the Employer's Executive Vice President for merit salary increases and promotions, though the Employer's managerial team determines the salaries for the Ticket Office Manager, Assistant Ticket Office Manager, and Ticket Services Coordinator classifications.

As an example of the Ticket Office Manager's role in promotions of employees, in 2012, the Ticket Office Manager announced, by e-mail, to the ticket office employees that the then-Assistant Ticket Office Manager was leaving, the then-Ticket Services Coordinator was

⁵ For example, in October 2014, the Ticket Office Manager addressed a request for "trade and promo" tickets, a request for tickets for an event at the Employer's facility from an advertising executive from a local radio station. The Ticket Office Manager and the Assistant Ticket Office Manager have the discretion to take tickets out of the Employer's inventory as "trade and promo tickets," as those two individuals and the Ticket Services Coordinator have authority over tickets. Similarly, the Employer provided a specific example from the winter of 2014-15 of the Ticket Office Manager dealing with a representative of a company over the Employer's order of blank stock tickets, with the Ticket Office Manager agreeing to the order on behalf of the Employer.

⁶ According to Pfanstiehl, the Employer hired the Ticket Office Manager to run the ticket office, investing him with great latitude to make all types of decisions regarding hiring, firing, and other supervisory and managerial issues. He also confirmed that the Ticket Office Manager is responsible for planning, implementation, management, and overall operation of the ticket office, including the supervision of the entire ticket office staff.

promoted to the Assistant Ticket Office Manager position, and the Ticket Services Coordinator position was open. In doing so, the Ticket Office Manager gave the ticket office employees the job posting, and invited them to ask him any questions. According to Grabowski, the Ticket Office Manager decided to promote the then-Ticket Services Coordinator to the vacated Assistant Ticket Office Manager classification, and the Ticket Office Manager recommended a salary for the vacated Ticket Services Coordinator classification, which Grabowski validated. For the Ticket Services Coordinator position, the Ticket Office Manager ultimately decided to hire Jeffrey Higgins, and the Executive Vice President did not participate in the selection process. Similarly, in September 2014, the Ticket Office Manager was asked by the Employer's Chief Executive Officer for, and provided, his thoughts and recommendations when the Assistant Ticket Office Manager who was promoted in 2012 resigned; the Ticket Office Manager recommended to fill the vacancy by promoting Christian Simmelink based on Simmelink's knowledge of the Employer's partners and renters and extensive ticketing experience, and the Employer ultimately decided to promote Simmelink to the position.

In another specific instance from the summer of 2014, the Ticket Office Manager was invited by, and recommended to the Executive Vice President that nine ticket office employees receive an increase to their hourly wage rates.⁷ The Executive Vice President decided upon the hourly wage increases, reducing some of the Ticket Office Manager's recommendations of a \$.75/hour increase to a \$.50/hour increase based on their brief tenures, but largely deferring to the Ticket Office Manager's recommendations. Separately, in September 2014, the Ticket Office Manager recommended to the Executive Vice President a specific salary for the Assistant Ticket Office Manager, which the Executive Vice President accepted.

In addition, the Ticket Office Manager performs the following tasks: communicates the Employer's policies, procedures, and other information to employees; approves employees' time records; handles administrative requests (e-mail addresses; computer log-in data); and completes and checks personnel forms. In one limited circumstance, the Ticket Office Manager requested that the Employer change an employee's method of payment to direct deposit from check, though the employee could have requested the change herself. The Ticket Office Manager also has authority to approve purchases up to \$1,000, but needs approval for purchases over \$1,000.⁸

The Ticket Office Manager's office is located in the ticket office area with the Unit employees and not, like the Employer's top managers, on a different floor. According to Mark Grabowski, the Employer's Operations Specialist who previously served as the Employer's Executive Vice President for 14 years, the Ticket Office Manager has an office within the ticket office because the Ticket Office Manager needs privacy to handle personnel matters, as well as

⁷ According to Grabowski, the nine ticket office employees that the Ticket Office Manager were not the entire staff, but the employees that the Ticket Office Manager thought deserved a raise.

⁸ The record includes an e-mail that the Ticket Office Manager sent to the then-Executive Vice President regarding the layout and capital expenditures needed for the ticket office for a separate venue, with the Ticket Office Manager seeking authorization for expenses for computer equipment of over \$1,000. Similarly, the record includes an e-mail from the Ticket Office Manager to the Employer's Director of Finance in March 2015 about the Employer's annual budget for the ticket office operations. According to Grabowski, the Ticket Office Manager submits an annual budget request to the Employer's Executive Vice President, as part of the Employer's overall annual budget.

to have private conversations with employees and representatives of organizations that rent the Employer's venue.⁹ The Ticket Office Manager is salaried and works full-time, unlike the Unit employees, who are paid an hourly rate and work part-time. The Ticket Office Manager also receives leave (personal; sick; vacation; and school visitation), health benefits, and contributions for other fringe benefits (retirement; long-term disability insurance; and life insurance) from the Employer. The Unit employees do not receive leave, health benefits, or other fringe benefits. The Ticket Office Manager is evaluated by the Executive Vice President, who does not evaluate any other ticket office employees.

b. Assistant Ticket Office Manager

The Assistant Ticket Office Manager supports the Ticket Office Manager with his responsibilities. This includes the responsibility for the day-to-day operations of the ticket office and the responsibility to direct and supervise employees in the ticket office. The job description of the position lists the responsibility to "enforce operational procedures" and requires that the Assistant Ticket Office Manager "be able to direct staff" and "[d]irect and supervises" the ticket office employees. The Assistant Ticket Office Manager also schedules employees, working around the times when ticket office employees were not available for a particular shift. The Employer's scheduling process involves the Unit employees informing the Assistant Ticket Office Manager for the times that each is available, from which the Assistant Ticket Office Manager creates the schedule. In addition, the Assistant Ticket Office Manager trains new employees, and implements and enforces the Employer's operational procedures. For example, in February 2015, the Assistant Ticket Office Manager sent an e-mail to the ticket office employees reminding them of the process for checking if a patron deserves a discount, and, if the patron does not, the process for seeking to get the patron to renew their discount status. In another example, the Assistant Ticket Office Manager reminded ticket office employees about the procedure for handling subscriptions for performances by the National Philharmonic. Moreover, the Assistant Ticket Office Manager has, in the past, signed a personnel form (e.g., a personnel action form or an employment eligibility form) for a newly-hired employee, and the Assistant Ticket Office Manager has the authority to approve an employee's time record. The Assistant Ticket Office Manager has a designated desk in the box office area, and is authorized to make requests for purchases of supplies for the ticket office. The Assistant Ticket Office Manager receives a salary, leave, health benefits, and contributions for other fringe benefits from the Employer.

c. Ticket Services Coordinator

The Ticket Service Coordinator's primary responsibility is to coordinate with organizations that rent the Employer's facility, such as for the requirements for their presentations. The Ticket Services Coordinator's responsibilities also include assisting in day-to-day operations, such as customer service and ticket sales, and acting as an in-house concierge for ticket requests from the Employer's staff. The Ticket Services Coordinator also communicates with performing groups about the requirements for their programming, and assists those groups with their requests. The job description for the position lists "communicate with

⁹ The Employer's President, Monica Jeffries, testified that the Ticket Office Manager has an office because of the need to have a private conversation with employees, such as for disciplinary meetings.

ticket office assistants on day to day operations” as an administrative duty.¹⁰ When neither the Ticket Office Manager nor the Assistant Manager is present, the Ticket Services Coordinator is the “highest manager present” at the facility.¹¹ The Ticket Services Coordinator also assists in training employees, and, like the Ticket Office Manager and the Assistant Ticket Office Manager, has access to the time records of the Unit employees, and each has the authority to approve or disapprove an employee’s time record. The Ticket Services Coordinator is another full-time salaried position, with leave, health benefits, and the fringe benefits discussed above. The Ticket Services Coordinator also has a desk in the box office area, immediately outside the Ticket Manager’s office and behind the box office windows where the Unit employees work.¹²

II. ANALYSIS

Initially, I note that unit clarification is warranted when, as here, there is an ambiguity involved in the unit placement of an individual that is necessary to resolve.¹³ As a matter of fact, the ambiguity regarding these classifications is manifest by the Union’s Certification of Representative for the Unit, which specifically states that the inclusion of the individuals in the three classifications at issue here would be resolved, if necessary, after the election. In such circumstances where the parties cannot resolve the status of the contested individuals, a unit clarification petition allows the Board to determine the unit placement. See, e.g., *Kirkhill Rubber Co.*, 306 NLRB 559 (1992). The agreement of the parties in Case 05-RC-159469 confirms that I am not upsetting an agreement or existing practice of these parties by determining the placement of the individuals in these three classifications. Furthermore, a unit clarification petition is an appropriate method for resolving a statutory exclusion, such as a Section 2(11) supervisor, provided the petition is filed at an appropriate time. See *Washington Post Co.*, 254 NLRB 168, 169 (1981); *Shop Rite Foods, Inc.*, 247 NLRB 883 (1980).

Having established that unit clarification is appropriate in the present case, I find that the Employer has carried its burden in showing that the position of the Ticket Office Manager is a supervisor under Section 2(11). However, I find that the Employer did not sufficiently establish by detailed evidence the required proof for the Assistant Ticket Office Manager and Ticket Services Coordinator classifications.

¹⁰ The Ticket Office Manager drafted the job description for the Ticket Services Coordinator classification. Pfanstiehl speculated that the Ticket Office Manager may have even created the position.

¹¹ Pfanstiehl testified about the Ticket Services Coordinator’s role in problem-solving and his use of discretion, but did not discuss any specific examples.

¹² The Ticket Office manager’s office and the desks for the Assistant Ticket Office Manager and the Ticket Office Coordinator are the only assigned work stations in the ticket office. According to Grabowski, the Assistant Ticket Office Manager and the Ticket Office Coordinator need assigned desks because they work forty hours or more a week, and they need space to perform their work. The ticket office includes four carrels where the Unit employees largely sell tickets over the telephone, and two separate windows dedicated to patron services, such as refunds and exchanges of tickets.

¹³ See, generally, the Board’s three *Bethlehem Steel* decisions that issued the same day at 329 NLRB 241, 243, and 245 (1999); respectively.

a. Legal standards

The term "supervisor" is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
NLRA § 2(11).

Consistent with this definition, individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11); their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment" and, their authority is held "in the interest of the employer." See *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–13 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994)). Supervisory status may be shown by demonstrating that the putative supervisor has the authority either to perform a supervisory function or effectively to recommend same. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006).¹⁴ An effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

As a general principle, the Board exercises caution "not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect." *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Oakwood, supra*, 348 NLRB at 688. Further, whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). The Act requires "evidence of actual supervisory

¹⁴ In *Oakwood*, the Board explained the meaning of certain critical terms used in Section 2(11) of the Act; to wit: to assign, responsibly to direct, and to exercise independent judgment. Thus, in *Oakwood*, the Board determined that the phrase "to assign" in Section 2(11) means: "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee. That is, the place, time, and work of an employee are part of his/her terms and conditions of employment." *Oakwood*, at 689. The Board defined "to direct," to apply to situations when an individual has workers under him and decides what job they will do next or who shall do it, provided that the direction is both "responsible... and carried out with independent judgment." *Id.* at 692. The Board defined "responsible" to mean accountable; that is, the Board stated that "it must be shown that the employer delegated to the putative supervisor the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." *Id.* Finally, as to "independent judgment," the Board stated that discretion exercised by an employee whose work is "predominantly intellectual and varied" merely establishes his or her status as a professional. In contrast, an employee "has the status of a supervisor under Section 2(11) if he/she exercises independent judgment in connection with one or more of the 12 specific functions listed in that provision of the Act." *Oakwood* at 694. In short, discretion unfettered by formula that implicates one or more of the 12 criteria set forth in Section 2(11) renders one, professional or not, a supervisor.

authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C.Cir. 1971). Mere conclusory statements, without such supporting evidence, are not sufficient to establish supervisory authority. *Sears Roebuck & Co.*, 304 NLRB 193 (1991); see also *G4S Regulated Security Solutions*, 362 NLRB No. 134, slip op. at 2 (2015). An individual's "theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers." *Oil Workers v. NLRB, supra*, 445 F.2d at 243. In addition, the evidence must show that the alleged supervisor knew of her authority to exercise such power. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 969 (4th Cir. 1980).

The Board has regarded evidence such as better pay and benefits or sometime training of other employees as persuasive "secondary indicia" of supervisory status. See, e.g., *American River Transportation Co.*, 347 NLRB 925, 927 (2006) (finding supervisory status based, in part, on better pay and benefits); *Laser Tool, Inc.*, 320 NLRB 105 (1995) (upholding an ALJ's finding of supervisory status based, in part, on job duty to sometimes train other employees), *Oakwood*, 348 NLRB at 691, n. 27.

The burden of proving supervisory status rests on the party asserting that status. See, e.g., *Kentucky River*, 532 U.S. at 711; *Oakwood*, 348 NLRB at 687.

In addition, the Board, as a matter of policy, traditionally excludes managerial employees from the protections of the Act. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). A "managerial employee" is defined as an employee who has the authority to formulate, determine, or effectuate employer policies by expressing and making operative the decisions of their employer and those who have the discretion in the performance of their jobs independent of their employer's established policies. *Tops Club, Inc.*, 238 NLRB 928, n. 2 (1978). A "managerial employee" has been described as an individual ranking high in an organization's structure, such that the managerial employee is considered so clearly outside the protection of the Act that no specific statutory exclusion is necessary. *NLRB v. Yeshiva*, 444 U.S. at 682. The party asserting that an individual should be excluded as a managerial employee bears the burden of establishing the individual's managerial status. *George Mee Memorial Hospital*, 348 NLRB 347, 333 (2006).

b. Application

i. Ticket Office Manager

I find the Ticket Office Manager to be a statutory supervisor under Section 2(11) of the Act. First and foremost, the Ticket Office Manager has the authority to hire the part-time employees who comprise the ticket office staff. I find that the record establishes that the Ticket Office Manager uses the required independent judgment in exercising this hiring authority, because the Ticket Office Manager is "free of the control of others" in making these hiring decisions. *Oakwood*, 348 NLRB at 692-693. None of the Employer's top managers above the Ticket Office Manager (the Executive Vice President; President; and Chief Executive Office) participate in the interview process for the ticket office employees.

In addition, I also find that the Ticket Office Manager has the authority to effectively recommend the hiring or promotion of other staff. The record includes three specific examples of such authority: the 2012 promotions of individuals to the Assistant Ticket Office Manager

and Ticket Services Coordinator positions; and the 2014 promotion of the current Assistant Ticket Office Manager. As with the hiring of part-time ticket office employees, the record reflects that the Ticket Office Manager made his recommendations “free of the control of others,” and, in the case of the 2014 promotion decision, formed his opinion based on his observation of the successful candidate’s knowledge of the Employer’s clientele and experience in managing a ticketing operation.

Furthermore, the record suggests that the Ticket Office Manager has the authority to effectively reward employees, such as by his recommendation for certain ticket office employees to receive increases to their hourly wage rate. I note that the record does not contain sufficient evidence that the Ticket Office Manager exercised any independent judgment regarding these recommendations, though the record establishes that the Ticket Office Manager’s recommendations were largely deferred to by the Executive Vice President. Similarly, I note that the record is silent regarding whatever independent judgment that the Ticket Office Manager might exercise in any direction he provides to ticket office employees in their work. Accordingly, I am not relying on the factors of rewarding or directing employees in making my determination on the Ticket Office Manager’s supervisory status. Likewise, without more specific, detailed evidence, I am not willing to rely upon the “paper authority” of the Ticket Office Manager’s job description, nor the myriad conclusory statements in the record regarding the Ticket Office Manager’s level of authority and discretion.

With at least some primary indicia of supervisory status, I also rely on the secondary indicia to support my conclusion that the Ticket Office Manager should be excluded from the unit as a statutory supervisor. First, the Employer’s top managers consistently testified to the Employer’s intent to establish the Ticket Office Manager position as supervisory. Furthermore, the Ticket Office Manager has materially different terms and conditions of employment than the ticket office employees in the Unit: hours (full-time vs. part-time); pay (salary vs. hourly wage); leave (several types of paid leave vs. none), and health and fringe benefits (receives them vs. none). Also, the Ticket Office Manager has a private office within the ticket office area, the only individual in the ticket office with such accommodation.

The Union argues that the Employer did not meet its burden because the evidence introduced was not sufficiently detailed or specific. While I generally agree that much of the Employer’s evidence was conclusory and not specific, I disagree that the Employer did not sufficiently establish the supervisory status of the Ticket Office Manager. As discussed above, the Employer established that the Ticket Office Manager has the authority to hire employees, as well as the authority to effectively recommend their hire and/or promotion. Furthermore, the record establishes that the Ticket Office Manager exercises this authority without the control of others, and that he reaches his hiring/promotion decisions by evaluating the merits of the successful candidates for the positions. I also view *Republican Co.*, 361 NLRB No. 15 (2014), relied on by the Union, as somewhat distinguishable. Unlike the putative supervisor in that case, which the Board found was not a supervisor based in part on evidence of the direct participation of a higher supervisor in the hiring process, the former Executive Vice President in the case at hand (the Ticket Office Manager’s direct superior) testified as to his own lack of involvement in the hiring decisions and recommendations made by the Ticket Office Manager. Thus, I view this case as having greater evidence establishing a lack of independent investigation than was present in *Republican Co.* Furthermore, I disagree with the Union’s point as to the extent of evidence

that the Employer needed to provide regarding its own hiring process. While evidence on the hiring process would have been preferable, I do not consider it necessary where the evidence establishes that the Ticket Office Manager has the authority to hire and/or effectively recommend the hire and/or promotion of employees, and that the Ticket Office Manager uses independent judgment in exercising those authorities.

However, I find that the Employer did not meet its burden of establishing that the Ticket Office Manager falls within the Board's exclusionary policy for managerial employees. While the record contains sufficient evidence of the Section 2(11) indicia for the Ticket Office Manager, the record is largely silent as to how the Ticket Office Manager determines or effectuates the Employer's organizational policies.

For the reasons stated above, I conclude that the Ticket Office Manager is a supervisor under Section 2(11) of the Act and is excluded from the certified bargaining unit.

ii. *Assistant Ticket Office Manager*

In contrast, I find that the Employer failed to meet its burden of demonstrating by specific, detailed evidence that the Assistant Ticket Office Manager is a statutory supervisor. For the same reasons discussed above regarding the Ticket Office Manager, I find the record evidence such as the job description, the organization chart, and the position title to be insufficient and akin to "paper authority" without testimony or documentary evidence establishing that the Assistant Ticket Office Manager has at least one of the supervisory indicia listed in Section 2(11). While there is some testimony and documentary evidence suggesting that the Assistant Ticket Office Manager might direct the work of ticket office employees, neither is sufficient in either its specificity or detail, and there is no record evidence indicative that the Assistant Ticket Office Manager uses any independent judgment in whatever direction there may be of the work of ticket office employees. As for the record evidence going to the Assistant Ticket Office Manager's secondary indicia of supervisory status, I will not find supervisory status by relying on secondary indicia without sufficient record evidence of at least one primary indicia. *Training School of Vineland*, 332 NLRB 1412 (2000).

The Employer cites to the Assistant Ticket Office Manager's role in creating the ticket office employees' schedule as establishing her as a statutory supervisor. I disagree. See *Dean & DeLuca of New York*, 338 NLRB 1046, 1048, n. 15 (2003)(scheduling did not establish supervisory status). While the record establishes that the Assistant Ticket office Manager makes the schedule, it appears that all that is involved is ascertaining the availability of the ticket office employees. I do not consider the scheduling to involve the type of independent judgment necessary to prove the supervisory indicia of assigning work. I also reject the Employer's argument that Assistant Ticket Office Manager has the authority to discipline employees, relying on one e-mail from the Assistant Ticket Office Manager to the ticket employees reminding the employees to check if a patron deserves a discount and the procedure for renewing that patron's discount status, and a second e-mail to ensure that an employee was added to the Employer's time records system. The Assistant Ticket Office Manager's e-mails are plainly not disciplinary in nature for any employee, but only a "friendly reminder" of one particular procedure (Pet. Exh. 22) and a simple administrative request (Pet. Exh. 20). I also do not agree with the Employer's contention that the Assistant Ticket Office Manager's act of signing her name to a new employee's personnel form establishes that the Assistant Ticket Office Manager has the authority

to hire employees. Besides appearing to be nothing more than an administrative act (for which there is scant testimony), there is no record evidence that the Assistant Ticket Office Manager uses any independent judgment in signing these personnel forms, which seems to be a more routine and largely clerical task. Finally, while the record hints that the Assistant Ticket Office Manager may perform the duties of the Ticket Office Manager, the record does not establish the frequency or duration that such occurs, whether there is any additional oversight, or specific examples of the Assistant Ticket Office Manager's exercise of authority whenever this occurs.

Similarly, I conclude that the Employer did not establish that the Assistant Ticket Office Manager falls within the Board's exclusion for managerial employees. Much like the Ticket Office Manager, the record is virtually silent on the role of the Assistant Ticket Office Manager in forming or effectuating the Employer's organizational policies.

For the reasons stated above, I conclude that the Employer did not meet its burden of establishing by specific, detailed record evidence that the Assistant Ticket Office Manager is a supervisor under Section 2(11) of the Act or a managerial employee.

iii. *Ticket Services Coordinator*

Turning to the final classification at issue, I find the Employer did not carry its burden of establishing that the Ticket Services Coordinator is a statutory supervisor. The Employer did not establish that the Ticket Services Coordinator directed the work of any employee, or was involved in the hiring, or discipline of any employee. The evidence shows that the Ticket Services Coordinator's role is primarily to interact with patrons and renters, while also serving as an "in-house concierge" for the ticket requests from within the Employer's staff. The Employer did not offer any evidence that this customer service role involved the supervision or direction of other ticket office employees. Notably, the Employer does not argue that the Ticket Services Coordinator has any of the Section 2(11) indicia, other than his direction of other employees. However, the Employer did not establish *if* the Ticket Services Coordinator actually has the authority to responsibly direct the work of any employees, or *how* that authority is exercised. Furthermore, while the record establishes that the Ticket Services Coordinator may serve as the "manager in charge" in the absence of the Ticket Office Manager and the Assistant Ticket Manager, the record does not reflect the frequency or duration of these instances, nor of the type of supervisory authority that the Ticket Services Coordinator has exercised in those times. Neither Grabowski nor any other witness testified about what the Ticket Services Coordinator's responsibilities would be in that temporary role. The Employer must provide specific evidence of the "genuine management prerogatives" being used in those situations. See *Oakwood*, above at 648, see also *Oil Workers v. NLRB*, above at 243. Furthermore, the Board has long held that the mere fact that employees are at certain times the highest ranking employee on site does not, by itself, establish supervisory authority. See *McCullough Environmental Services*, 306 NLRB 565, 566 (1992) enf. denied 5 F.3d 923 (5th Cir. 1993); see also *Community Education Centers, Inc.*, 360 NLRB No. 17, slip op. at 1 (2014) (highest-ranking status insufficient to establish Sec. 2(11) authority). Finally, as with the Assistant Ticket Office Manager, I will not find Section 2(11) status on the basis of secondary indicia (work location; different terms and conditions of employment; role in training; intent of the employer) when there is insufficient evidence of primary supervisory indicia.

As with the two classifications analyzed above, I also reject the Employer's argument that the Ticket Services Coordinator should be excluded as a managerial employee. Similar to the Ticket Office Manager and the Assistant Ticket Office Manager, the record does not establish that the Ticket Services Coordinator forms, develops, or effectuates any of the Employer's organizational policies.

For the reasons stated above, I conclude that the Employer has not carried its burden of establishing by specific, detailed evidence that Ticket Services Coordinator is supervisor under Section 2(11) of the Act or a managerial employee.

III. CONCLUSIONS AND FINDINGS

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director. Upon the entire record in this proceeding, I find that:

1. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case;
2. The Union is a labor organization within the meaning of Section 2(5) of the Act;
3. The Union is the exclusive collective-bargaining representative of the following unit: all full-time and regular part-time employees employed by the Employer in the Employer's ticket office, excluding all office clerical employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined by the Act;
4. The Employer proposes to clarify the existing bargaining unit as follows: to exclude the classifications of: Ticket Office Manager; Assistant Ticket Office Manager; and Ticket Services Coordinator; and
5. The classification of Ticket Office Manager is a supervisor within the meaning of Section 2(11) of the Act.

IV. ORDER

Based on the above, IT IS HEREBY ORDERED that the Employer's petition for unit clarification is granted in part and denied in part, and the existing bargaining unit is clarified to exclude the classification of Ticket Office Manager, and to include the classifications of Assistant Ticket Office Manager and Ticket Services Coordinator.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland, this 8th day of December 2015.

(SEAL)

/s/ Charles L. Posner

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